

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 750 OF 2005

Raj Residency I Co-Op.
Hsg. Society.

.. Appellant

Vs.

M/s. Shree Hari Builders and ors.

.. Respondents

Ms. Sumedha Rao for Appellant.

Mr. V.A. Thorat with Mr. Niranjan Pandit for
Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : July 15, 2005.

P.C.:

1. The appellant is a Co-operative Housing Society duly registered under the Maharashtra Co-op. Societies Act with Registration No.BOM/WR/HSG/TC/1154/2001-2002. It has filed S.C. Suit No.813 of 2005 before the Bombay City Civil Court along with Notice of Motion No.1340 of 2005. The said Notice of Motion has been dismissed by the impugned order dated 6/7/2005 by the learned Judge of the City Civil Court at Mumbai.

2. The trial court held that on the basis of the

agreement entered between the flat purchasers and the builder and, therefore, any amenities sought to be provided for by the builder eminent from such agreement, the remedy for enforcement being available under the Specific Relief Act. The trial court specifically held that in view of the provisions of Section 41(h) of the said Act, there being an alternative efficacious remedy, relief of injunction could not be granted. It is also recorded the point of limitation on the ground that the society was formed way back in the year 1999 and the suit was filed in the year 2005, assurance was given that the amenities would be provided in June 2002 and the plaintiff took its own time to file the suit in 2005 but without providing any explanation in the plaint. It is clear from the registration number of the society that it has been registered sometimes in the year 2001-02 and not in the year 1999. There is correspondence on record showing that the society was making representations to the defendant-builder in 2004 onwards. The trial court also noted that most of the original flat owners, with whom the defendant-builder had signed the agreement were not

the present members of the plaintiff-society and from amongst the original purchasers only 11 of them continued to be members as at present. The reasoning given by the trial court is indefensible and, therefore, the impugned order cannot be sustained.

3. However, that by itself would not grant relief to the plaintiff-society. The registered Co-Op. Housing Society is a legal entity endowed with legal rights for enforcement of the MOFA as well as the D.C. Regulations framed by the Municipal Corporation. However, in the plaint the society failed to crystallise clearly the relief of enforcement of statutory obligations or enforcement of such statutory provisions or the D.C. Rules. Ms.Rao the learned counsel for the plaintiff submitted that the plaintiff-society has already applied for amendment of the plaint. Unless the plaint is amended so as to make out a case for enforcement of the statutory provisions or D.C. Rules, it would not be possible for the trial court to consider the plaintiff's case for injunction of any sort and on the face of the pleadings set out in the plaint as at present there is

no case made out for injunction.

4. Under the circumstances, the appeal is disposed off with liberty to the plaintiff to approach the trial court for amendment of the plaint on the lines of observations made hereinabove and to take out fresh Notice of Motion for interim relief, if so advised. Let it be made clear that the trial court's observation that the suit is not tenable or the injunction application cannot be entertained would not come in the way of the plaintiff for moving a fresh Notice of Motion after amendment of the plaint.

(B.H. Marlapalle, J.)